

requirements as set forth in paragraph (a) of this section. These types of lenders must be approved by the FmHA or its successor agency under Public Law 103-354 Administrator prior to the issuance of the loan guarantee.

(b) With written concurrence of FmHA or its successor agency under Public Law 103-354, another eligible lender may be substituted for a lender who holds an outstanding Form FmHA or its successor agency under Public Law 103-354 449-14, "Conditional Commitment for Guarantee," provided the borrower, loan purposes, scope of the project, and loan terms remain unchanged. After issuance of the Loan Note Guarantee and with prior written approval of the FmHA or its successor agency under Public Law 103-354 Administrator, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities, and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the FmHA or its successor agency under Public Law 103-354 Administrator only when a lender discontinues lending operations or other extreme situations require a substitution of lender. If approved by the FmHA or its successor agency under Public Law 103-354 Administrator, the State Director will submit to the Finance Office Form FmHA or its successor agency under Public Law 103-354 1980-42, "Notice of Substitution of Lender."

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29171, June 26, 1991]

#### § 1980.819 Loan guarantee limits.

The percentage of guarantee, up to the maximum allowed by this section, is a matter for negotiation between the lender and FmHA or its successor agency under Public Law 103-354.

(a) Normally, guarantees will not exceed 80 percent unless extraordinary circumstances exist. The State Director will document these circumstances in the case file. National Office concurrence is required when the requested guarantee exceeds 80 percent. The maximum allowable guarantee will be 90 percent.

(b) Lenders and borrowers will propose the percentage of guarantee. FmHA or its successor agency under Public Law 103-354 informs lenders and borrowers in writing on Form FmHA or its successor agency under Public Law 103-354 449-14, of any percentage of guarantee less than proposed by the lender and borrower, and the reasons therefore. FmHA or its successor agency under Public Law 103-354 determines the percentage of guarantee after considering all credit factors involved, including but not limited to:

- (1) Borrower's management.
- (2) Collateral.
- (3) Financial condition.

(4) Lender's exposure (retain a minimum of 5% of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another.)

(5) Current trends and economic conditions.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29171, June 26, 1991]

#### §§ 1980.820-1980.822 [Reserved]

#### § 1980.823 Interest rates.

(a) Rates will be negotiated between the lender and the borrower. They may be either fixed or variable rates as long as they are legal. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA or its successor agency under Public Law 103-354 review and approval. FmHA or its successor agency under Public Law 103-354 will take into consideration in approving the lender's interest rate, the rate at which guaranteed loans are being sold or traded in the secondary market.

(b) A variable interest rate must be tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. Notice of any interest rate change proposed by the lender should allow a sufficient time period for the borrower to obtain any required state or other regulatory approval and to implement any user rate adjustments necessary as a result of the interest rate change. The interest rate will not

be raised more than one percent per year. The intervals between interest rate adjustments will be specified in the loan agreement but not more often than annually. During the life of the loan, the interest rate will not be increased more than 5 percentage points over the interest rate at loan closing. The lender must incorporate within the variable rate promissory note or bond at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(c) Any change in the interest rate between the date of issuance of the Form FmHA or its successor agency under Public Law 103-354 449-14 and before the issuance of the Loan Note Guarantee (Form FmHA or its successor agency under Public Law 103-354 449-34) must be approved by the State Director. Approval of such change will be shown on an amendment to Form FmHA or its successor agency under Public Law 103-354 449-14.

(d) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree and:

(1) The rate on the unguaranteed portion does not exceed that currently being charged on loans of similar purpose for borrowers under similar circumstances.

(2) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(e) When multi-rates are used, the lender will provide FmHA or its successor agency under Public Law 103-354 with the overall effective interest rate for the entire loan. Multi-rate loans must be either fixed or variable, but not both.

(f) The borrower, lender and holder (if any) may collectively effect a permanent reduction in the interest rate on their CP guaranteed loan at any time during the life of the loan upon written agreement by these parties. FmHA or its successor agency under Public Law 103-354 must be notified by the lender,

in writing, within 10 calendar days of the change. If the guaranteed portion has been repurchased by FmHA or its successor agency under Public Law 103-354, then FmHA or its successor agency under Public Law 103-354 is a holder, and must affirm or reject interest rate change proposals. When FmHA or its successor agency under Public Law 103-354 is a holder, it will concur in such interest rate change only when it is demonstrated to FmHA or its successor agency under Public Law 103-354 that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination will include whether the proposed interest rate will be below the Government's cost of borrowing money; whether continuing with the loan would realistically promote or enhance rural development, whether the monetary recovery would be increased by proceeding immediately to liquidation, if applicable; or allowing the borrower to continue at a reduced interest rate; and whether an in-depth financial analysis by the lender reasonably indicates that the project would be successful at a lower interest rate and reasonably indicates that the borrower could make the reduced payment and pay off amounts in arrears, if any. The FmHA or its successor agency under Public Law 103-354 file will reflect the documentation of the interest rate change decision.

(1) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(2) Variable rates can be changed to a lower fixed rate. In a final loss settlement, when qualifying rate changes are made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect, except that interest claimed on a loan which originated at a variable rate, can never exceed the amount which would have been eligible for claim, had the variable rate remained in force. The lesser cost to the Government will always

prevail. The lender must maintain records which adequately document the accrued interest claimed.

(3) The lender is responsible for the legal documentation of interest changes by a rider attached to the promissory note(s) or any other legally effective amendment of the rate(s); however, no new note(s) may be issued.

(g) No increases in interest rates will be permitted under the CP loan guarantee except the normal fluctuations in approved variable interest rate loans.

(h) FmHA or its successor agency under Public Law 103-354 will notify the Finance Office of any interest rate reduction by using Form FmHA or its successor agency under Public Law 103-354 1980-47, "Guaranteed Loan Borrower Adjustments." The District Director will make corrections to the Rural Community Facility Tracking System (RCFTS) reflecting the interest rate change. The FmHA or its successor agency under Public Law 103-354 loan file, as well as the attachments to the copy of the promissory note in the file, will be documented by the District Director to reflect any change in the interest rate.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29171, June 26, 1991]

#### § 1980.824 Terms of loan repayment.

(a) Principal and interest on the loan will be due and payable as provided in the debt instrument except, any interest accrued as the result of the borrower's default on the guaranteed loan(s) over and above that which would have accrued at the debt instrument rate on the guaranteed loan(s) will not be guaranteed by FmHA or its successor agency under Public Law 103-354. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income, but such installment will be due and payable within two years from the date of the debt

instrument and at least annually thereafter. Interest will be due at least annually from the date of the debt instrument. Ordinarily, monthly payments will be expected, except for borrowers with income limited to less frequent intervals.

(b) The maximum time allowable for final maturity for an FmHA or its successor agency under Public Law 103-354 guaranteed CP loan will be limited to the useful life of the facility, not to exceed forty (40) years.

(c) FmHA or its successor agency under Public Law 103-354 will not guarantee any loan in which the bond, promissory note or any other document provides for the payment of interest upon interest.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29171, June 26, 1991]

#### §§ 1980.825-1980.831 [Reserved]

#### § 1980.832 Environmental requirements.

The environmental requirements for this subpart are set out at §1980.40 of subpart A of this part and subpart G of part 1940 of this chapter.

#### § 1980.833 Flood or mudslide hazard area precautions.

The flood or mudslide hazard area precautions required for this subpart are set out at §1980.42 of subpart A of this part.

#### § 1980.834 Equal opportunity and non-discrimination requirements.

The equal opportunity and non-discrimination requirements for this subpart are set out at §1980.41 of subpart A of this part.

#### §§ 1980.835-1980.841 [Reserved]

#### § 1980.842 Economic feasibility requirements.

The economic feasibility requirements for this subpart are set out at §1942.17(h) of subpart A and/or at §1942.116 of subpart C of part 1942 of this chapter.

[56 FR 29171, June 26, 1991]

#### § 1980.843 Security.

(a) The lender is responsible for seeing that proper and adequate security